

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
Beckley Division**

BELLWOOD CORP.,
GREENBRIER HOTEL CORP.,
GREENBRIER GOLF AND TENNIS CLUB
CORP.,
GREENBRIER MEDICAL INSTITUTE, LLC,
THE GREENBRIER SPORTING CLUB
DEVELOPMENT COMPANY, INC.,
THE GREENBRIER SPORTING CLUB, INC.,
JUSTICE FAMILY GROUP, LLC,
JAMES C. JUSTICE COMPANIES, INC.
JUSTICE FARMS OF NORTH CAROLINA,
LLC,
JUSTICE LOW SEAM MINING, INC.,
OAKHURST CLUB, LLC,
TAMS MANAGEMENT, INC.
TRIPLE J PROPERTIES LLC,
JAMES C. JUSTICE II,
CATHY L. JUSTICE, AND
JAMES C. JUSTICE III

Plaintiffs,

v.

CARTER BANK & TRUST, et al.

Defendants.

Civil Action No. 5:21-cv-00320

DEFENDANTS' MOTION TO CONTINUE JULY 1 INITIAL SCHEDULING ORDER

On July 1, the Court entered an initial scheduling order, establishing a Rule 26(f) conference, Report of Parties Planning Meeting and Scheduling Order Worksheet, Rule 26(a)(1) disclosures, and if necessary, a telephonic scheduling conference. ECF No. 41. That same order also set a deadline for Rule 12(b) motions. *Id.* Subsequently, however, the Court granted bifurcated briefing such that the 12(b)(2) and (3) motions regarding jurisdiction and venue could be filed and decided first then, if necessary, 12(b)(6) motions could be filed at a later date. ECF No. 44.

Defendants have now filed two motions to dismiss challenging the jurisdiction and venue of this action. ECF Nos. 49–52. Plaintiffs have responded, ECF No. 58, and the Defendants will reply in due course. Plaintiffs also seek limited jurisdictional and venue discovery. ECF No. 53. Defendants have opposed, ECF No. 56, and the Court has ruled that it will consider the propriety of such discovery after the jurisdiction and venue motions have been fully briefed, ECF No. 55.

Though this subsequent briefing is proceeding apace, the initial scheduling order issued on July 1 is still in place. Given these subsequent developments, Defendants suggest that that initial scheduling order be continued generally, pending resolution of the Rule 12(b) motions. If the 12(b)(2) and (3) motions are granted in Defendants’ favor, then there will be no need for the dates in the initial scheduling order. Even if those motions are denied in Plaintiffs’ favor, the Defendants still have substantive 12(b)(6) motions. And especially if Plaintiffs obtain “limited jurisdictional and venue discovery,” ECF No. 53, there will be no need yet for the *general* scheduling order or the Rule 26(a)(1) disclosures called for in the July 1 initial scheduling order. While the Defendants oppose such discovery, ECF No. 56, they do recognize that, if ordered, the scheduling of this matter is significantly different.

Thus, if the pending motions to dismiss are granted, denied, or held in abeyance pending jurisdictional and venue discovery, there is little reason to move forward with the July 1 initial scheduling order. No matter the resolution of the pending motions, those dates will be—and indeed, effectively already have been—overtaken by events. In light of these facts, the Defendants respectfully submit and request that the July 1 initial scheduling order be generally continued until resolution of the Rule 12(b) motions.¹

¹ Undersigned counsel further submits that key, necessary counsel who would attend the telephonic scheduling conference are otherwise unavailable that day. One will be in trial, and another will be on a preplanned, prepaid vacation out of the country.

Dated: August 16, 2021

Respectfully submitted,

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FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

BELLWOOD CORP., et al.,

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Civil Action No. 5:21-cv-00320
Honorable Frank W. Volk, Judge

CARTER BANK & TRUST, et al.,

Defendants.

CERTIFICATE OF SERVICE

I, R. Booth Goodwin II, hereby certify that I served a true and correct copy of the foregoing **Defendants' Motion to Continue July 1 Initial Scheduling Order** upon the following counsel of record on August 16, 2021, via the Court's CM/ECF system.

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